IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

WRIT PETITION NO.1147 OF 1994

Everest Industries Limited ..Petitioner.
Vs.
Association of Engineering Workers & anr. ..Respondents.

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Mr. J.P. Cama, Senior Advocate with Mr. A.M. Kapadia and Mr. G.S. Shetty i/b M/s. Crawford Bayley & Co. for the Petitioner.
Mr. N.M. Ganguli for the Respondent.

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CORAM: DR. D.Y. CHANDRACHUD, J.

19th October, 2006.

P.C. :

1. These proceedings arise out of an order passed by the Industrial Court on 21st February, 1994 in complaints of unfair labour practices under Items 5 of Schedule II and Item 9 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 Act.

2. The Petitioner was at the material time manufacturing Asbestos roofing sheets at its factory at Mulund. On 6th November, 1980 a settlement was signed in respect of the Mulund undertaking

with the recognized union. The settlement, according to the Petitioner, laid down certain minimum norms of production and provided for incentive schemes if the norms were achieved. The case of the Petitioner is that the workmen continued to give normal production until August 1984 after which they started indulging in acts of intimidation and violation. The management declared a lock out on 15th July, 1985 which was lifted on 20th June, 1986. The workers resigned en masse from the earlier recognized union in December 1983 and joined the First Respondent which was granted recognition on or about 24th December, 1986. A charter of demands was served by the First Respondent on 5th February, 1987. The case of the management was that with effect from 5th May, 1987, the First Respondent in an attempt to pressurise the management to accept all its demands instigated the workmen to stop work and proceed on a flash strike. Notices were put up according to the Petitioner on 5th and 6th May, 1987 recording the events that transpired. According to the management the workmen at the Mulund undertaking reported for work from 5th May, 1987 but did not carry out their assigned duties. The Petitioner,

therefore, deducted a proportionate part of the wages of the workmen. On 3rd July, 1987 the First Respondent filed a complaint of unfair labour practices being complaint (ULP) 631 of 1987 under Item 5 of Schedule II and Item 9 of Schedule IV. On 10th August, 1987, the Petitioner instituted complaint (ULP) 731 of 1987 alleging that the First Respondent was engaged in an unfair labour practice under Items 1 and 5 of Schedule III. The contention of the Petitioner is that the First Respondent had actively instigated an illegal strike resulting in the stoppage of work and the loss of production. An ad interim order was passed on the complaint on 10th August, 1987.

3. The complaints were disposed of by the Industrial Court by its order dated 21st February, 1994. The Industrial Court dismissed the complaint filed by the management and allowed the complaint filed by the union holding that the management was guilty of an unfair labour practice under Item 9 of Schedule IV. The management was directed to refund the amount that was deducted by the company from the salaries of the concerned workmen.

4. On behalf of the Petitioner the principal submission has been that as a result of subsequent developments that have taken place, the basis of the order of the Industrial Court does not survive, since all the workmen have tendered their resignations and received their terminal dues in final settlement of their claims. In order to set up that case affidavits dated 4th July, 1997 and 17th July, 1997 have been filed on behalf of the management. In the affidavits it has been stated that all the workmen who are concerned with the outcome of the Petition resigned from service. Each of the workmen was stated to have tendered a letter of resignation duly countersigned by two members of the committee of the First Respondent union. Each of the workmen was stated to have executed a declaration to the effect that upon the workman resigning from service, the order impugned in these proceedings would be set aside and that the workman had no objection to the amount that was deposited with the Registrar of the Industrial Court being returned to the Petitioner together with interest. The First Respondent had filed a complaint of unfair labour practice

being complaint (ULP) 1396 of 1994 alleging that the workmen had tendered their resignation under coercion. The complaint was dismissed by an order dated 28th February, 1997 by which the Industrial Court came to the conclusion that the resignations of the workmen have been tendered voluntarily.

5. Now in assessing the submission that has been urged on behalf of the management it would be necessary to advert both to the judgment of the Industrial Court in complaint (ULP) 1396 of 1994 and to the judgment of this Court dated 23rd November, 1998 in a petition challenging the judgment of the Industrial Court. Before the Industrial Court in complaint (ULP) 1396 of 1994 the contention of the First Respondent herein which was the complainant union was that all the workmen – numbering about 458 – were made to resign under coercion. On the other hand the management contended that while it was employing about 458 workmen, most of them had voluntarily resigned between 24th and 27th December, 1994 while the remaining 30 workmen also tendered their resignations in January 1995. Among the issues

that were framed by the Industrial Court was (i) whether the resignations submitted by all but 30 workers between 24th and 27th December, 1994 and those tendered by the remaining workmen later were given voluntarily or otherwise; (ii) whether the signatories to the documents were aware of the contents and the consequences thereof and (iii) whether the allegation of an unfair labour practice on the part of the management was established. By its judgment and order dated 28th February, 1997 the Industrial Court rejected the contention of the union that the resignations were not voluntary. In the course of its judgment the Industrial Court noted that the Petitioner herein had entered into a development agreement with the Third Respondent to the earlier proceedings agreeing to give development rights to the latter, in respect of a total area of 75,582 sq. mtrs. of the land. The Industrial Court noted that between 1993 and September 1994 about 207 employees of the company who were occupying residential staff quarters allotted by the company as a condition of employment individually arrived at an agreement by which they surrendered the residential quarters in consideration whereof the

developer would provide tenements to them on ownership basis free of costs. The Industrial Court recorded as an admitted position that almost all the workmen have received payment by way of compensation from the developer by cheque and other workmen have received their terminal dues which had been encashed. The Industrial Court came to the conclusion that the workmen had resigned voluntarily from service after receiving their terminal benefits; the resignations were endorsed by two committee members of the First Respondent and that in pursuance of the letters of resignation all the workmen had accepted their terminal dues.

6. The order of the Industrial Court in complaint (UL) 1396 of 1994 was challenged before this Court in a petition under Article 227 viz. Writ Petition 4223 of 1998. By a judgment and order dated 23rd November, 1998 Hon'ble Mr. Justice B.N. Srikrishna (as His Lordship then was) rejected the petition and concurred with the findings of the Industrial Court with the following observations:

> "The Industrial Court has, on full scale trial of the complaint and minute examination of the oral

> evidence, recorded findings that the workers had resigned on their own accord after knowing the contents of their resignation letters. Merely because all the workers simultaneously decided to do so, it is not possible to draw an inference that they were pressurised.
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> In view of the clear finding of facts recorded by the Industrial Court, I see very little scope for interference in writ jurisdiction.
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> Hence rejected."

7. The position that emerges therefore is that all the workmen of the Petitioner had collected their terminal dues and had resigned from service. The submission that the resignations were not voluntary was the subject matter of determination by the Industrial Court in a complaint in which evidence was adduced. The Industrial Court did not find any merit in the grievance and the order of the Industrial Court was sustained by this Court. In the affidavit that has been filed on behalf of the Petitioner in these proceedings on 17th July, 1997 a reference has been made to the declarations executed by the workmen, one of them being annexed to the affidavit, by which the workmen have specifically given up their claims inter alia under the order of the Industrial Court which

is the subject matter of challenge in the present proceedings before this Court. Having regard to the judgment of the Industrial Court in complaint (ULP) 1396 of 1994 which was affirmed by this Court, it is not possible to accept the submission urged on behalf of the First Respondent that the claim that forms the subject matter of the present proceedings will survive the final settlement of dues that was arrived at between the management and the workmen. Counsel appearing for the management stated before the Court during the course of the submissions that he has already furnished inspection of all the individual letters of resignation and the declarations to counsel appearing for the First Respondent. Counsel appearing for the First Respondent made an effort to submit that the resignations were not voluntary. But it would not be open to this Court to enter upon that arena since that has been concluded by the decision of the Learned Single Judge dated 23rd November, 1998 in Writ Petition 4223 of 1998. In these circumstances, this Petition will have to be allowed by quashing and setting aside the order of the Industrial Court dated 21st February, 1994. Rule is accordingly made absolute in terms of

prayer clause (a). As a consequence thereof, the money which has been deposited by the Petitioner before the Industrial Court as reflected in the interim order dated 28th February, 1997 shall be refunded back to the Petitioner together with interest accrued thereon.

There shall be no order as to costs.